



Comptroller General
of the United States

030246

Washington, D.C. 20548

Decision

Matter of: Richard S. Cohen

File: B-249131.4

Date: June 24, 1993

Melinda L. Carmen, Esq., Carmen & Muss, for the protester.
Richard O. Duvall, Esq., and Richard L. Moorhouse, Esq.,
Dunnells, Duvall & Porter, for Alonzo O. Bliss Properties,
an interested party.

Michael T. Crehan, Esq., and William T. K. Dolan, Esq.,
General Services Administration, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

The General Accounting Office (GAO) will not consider protest of a building site selection where the General Services Administration (GSA) abandoned the procurement process by proceeding to obtain the property under condemnation authority; subsequent agreement by GSA and the building site owner on the terms of GSA's acquisition of the site shortly before a condemnation action was filed does not equate to a return to the procurement process such that GAO should review a protest of the building site selection.

DECISION

Richard S. Cohen protests the General Services Administration's (GSA) proposed acquisition of a building site from Alonzo O. Bliss Properties. Cohen contends that the process by which GSA selected Bliss's site for acquisition was flawed, and that GSA's evaluation of his proposed building site was unreasonable.

We dismiss the protest.

On January 14, 1991, GSA published in The Washington Post an advertisement seeking "expressions of interest" in providing a building site for the Department of Justice, in response to which GSA received eight offers. GSA requested appraisals of the offered sites, conducted environmental assessments, evaluated the offers submitted, requested updated offers, corresponded with the offerors seeking clarification of their offers, and requested and received updated offers.

After evaluating the updated offers, the agency determined that Bliss's site was most advantageous and selected it for acquisition. GSA was unable to reach an agreement with Bliss as to the purchase price of the site, and by letter dated June 8, 1992, informed Bliss that in the absence of an offer acceptable to GSA, it would cause the institution of condemnation proceedings to acquire the site.

Bliss filed a protest with our Office in response to GSA's threatened institution of condemnation proceedings of its offered building site, arguing that the agency had acted improperly by advertising its requirement for a site and seeking offers, and then "abandon[ing the] procurement . . . and condemn[ing] the property of the offeror of the favored site." In dismissing Bliss's protest, we found that the site acquisition provisions of the Public Buildings Act of 1959 (PBA), 40 U.S.C. § 604 (1988), under which GSA had proceeded, expressly provide for the acquisition of property by condemnation, and do not prohibit GSA from instituting condemnation procedures after seeking expressions of interest under the PBA.¹ Alonzo O. Bliss Properties, 71 Comp. Gen. 511 (1992), 92-2 CPD ¶ 98.

On July 8, 1992, Cohen protested to our Office that the process by which GSA had selected Bliss's site for acquisition was flawed, and that GSA's evaluation of its building site was unreasonable. We dismissed Cohen's

¹The site acquisition provisions of the PBA, 40 U.S.C. § 604, provide that:

"The Administrator [of GSA] is authorized to acquire by purchase, condemnation, donation, exchange, or otherwise, such lands or interest in land as he deems necessary for use as sites, or additions to sites, for public buildings. . . .

"In selecting a site under this section the Administrator [of GSA] is authorized to select such site as in his estimation is most advantageous to the United States, all factors considered, and to acquire such site without regard to title III of the Federal Property and Administrative Services Act of 1949. . . ."

protest and denied his subsequent request for reconsideration. Richard S. Cohen, B-249131.2, Nov. 16, 1992, 92-2 CPD ¶ 348, recon. denied, B-249131.3, Feb. 2, 1993, 93-1 CPD ¶ 91. While under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556 (1988), our Office generally considers protests of procurements conducted by GSA under the PBA, RJP Ltd., 71 Comp. Gen. 333 (1992), 92-1 CPD ¶ 310, in this case, GSA had abandoned the procurement process by proceeding with the condemnation of the Bliss site. Cohen's protest was thus not appropriate for our review. GSA had advised our Office that it was in the process of obtaining the necessary approvals to institute condemnation proceedings to acquire the site. GSA stated that in accordance with its established procedures, it had informed the Chairmen of the Senate Select Committee on Environment and Public Works and the House of Representatives Committee on Public Works and Transportation of its determination, and would be forwarding the matter to the Department of Justice after receiving the necessary approvals.

On February 24, 1993, Cohen again protested that the process by which GSA had selected Bliss's site for acquisition was flawed and that GSA's evaluation of Cohen's building site was unreasonable. The protester states here that he learned from the contracting officer on February 17, 1993, that the agency was not proceeding to condemnation, but was negotiating with Bliss for the purchase of the Bliss site. Cohen claims that "GSA has dropped its stated condemnation approach and has resumed its negotiations under this procurement/selection process with only one offeror," and that we should consider the merits of Cohen's protest.

We do not agree that GSA has "dropped its condemnation approach" and is again proceeding under the procurement process, such that GSA's selection of the Bliss site would be appropriate for our review. GSA notified Bliss in December 1992 that a condemnation action would be instituted and a "Declaration of Taking" for the acquisition of the Bliss site would be filed on February 1, 1993. Bliss and GSA met on January 15, 1993, and Bliss was again told by GSA that it would proceed with the condemnation, absent Bliss's acceptance of GSA's offered price. The record includes a letter dated January 22, 1993, from the GSA Regional Administrator to the Attorney General requesting that the Department of Justice institute condemnation proceedings, informing the Department of Justice of the sum to be paid Bliss as "just compensation" for the site and including a copy of the proposed "Declaration of Taking" to be filed. After further discussion during which various "counteroffers" proposed by Bliss were rejected by GSA, Bliss agreed on January 27 to the purchase price for the

site as proposed by GSA, except for costs associated with closing.²

The actions taken by GSA, such as informing Bliss of the date on which the condemnation action would be filed and preparing the "Declaration of Taking" to be filed by the Department of Justice, are consistent with the condemnation process. It is not the case, as the protester asserts, that GSA advised our Office that it intended to acquire Bliss's site by condemnation in order to evade review of its selection of Bliss's site. GSA's letter of June 8, 1992, informing Bliss that in the absence of an offer acceptable to GSA it would cause the institution of condemnation proceedings to acquire the site, was received by Bliss nearly 1 month before Cohen initially protested the site selection. The fact that GSA and Bliss reached agreement on the terms of GSA's acquisition of the site only 2 days before the condemnation action was to be filed is consistent with GSA's obligation in the acquisition of real property to "[a]void litigation where possible," Federal Property Management Regulations, 41 C.F.R. § 101-18.200 (1992), and does not, in our view, equate to a return to the procurement process such that GSA's actions would be appropriate for our review.

The protest is dismissed.



James F. Hinchman
General Counsel

²To date, GSA has not acquired the Bliss site by either condemnation or negotiated purchase.